IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

CRP.No. 703 of 2006()

AGAINST THE ORDER DATED 26/07/2006 IN EP.NO.765/2004 IN OS.2222/1998 of PRL.MUNSIFF COURT,THRISSUR

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REVN. PETITIONER: PETITIONER/JUDGMENT DEBTOR/DEFENDANT

JOHNSON, AGED 47 YEARS,
S/O.KURUTHUKULANGARA VARUKUTTY,
ANCHERY DESOM, OLLUR VILLAGE, THRISSUR TALUK.

BY ADV. SRI.P.K.SAJEEV

RESPONDENTS: DECREE HOLDER/PLAINTIFF

SIMON, S/O.ENOKKARAN RAPPAI,
CHRISTAPHER NAGAR, ANCHERY DESOM, OLLUR VILLAGE,
THRISSUR TALUK.

BY ADV. SRI.P.V.CHANDRA MOHAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

C.R.P. No. 703 OF 2006

Dated this the 28th day of May, 2007

JUDGMENT

It is brought to my notice that the revision petitioner-judgment debtor has not complied with the conditions imposed by this Court while granting stay. i.e. a sum of Rs.20,000/-shall be paid to the decree holder within two months. Mr.P.K.Sajeev, learned counsel for the petitioner submits that the contention raised by the petitioner against the prayer for personal execution is one of inability and that on the day the impugned order was passed since the petitioner's counsel was laid up and application for adjournment was filed, for cross examining PW1 which was declined by the learned Munsiff. The finding is on the basis of ex-parte evidence and the order is not preceded by an enquiry as envisaged by Rule 40 of Order XXI.

Having regard to the circumstance that the interim order dt.01.09.06 has not been sought to be varied by the petitioner so far, the petitioner is not entitled to aspire for an order of remand without any condition. He has to comply with the conditions imposed by this Court on 01.09.2006 at least within one month from today. If he complies with the above condition within one month, i.e. if he pays the sum of Rs.20,000/- to the respondent, either directly or through his counsel,

within the said period, the impugned order will stand set aside and the execution petition will be reconsidered and fresh orders will be passed on the execution petition by the learned Munsiff after completing the enquiry regarding the means or otherwise of the revision petitioner to pay the decree debt in a lump or substantial portion thereof and on the willful nature of negligence in the matter of making payment. If payment is not made within the stipulated time, the impugned order will stand confirmed and the CRP will stand dismissed.

PIUS C. KURIAKOSE, JUDGE

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